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MONTANA
Department of Public Health & Human Services

Information newsletter to employers from the Department of Public Health and Human Services

Child Support Enforcement Division (CSED)

December 1999

Dear Montana Employer:

This newsletter contains articles relating to information provided in the Montana Income Withholding Order. Our goal in this newsletter is to provide more information to you as an employer about Montana withholding limitations, the \$5.00 per month fee employers can charge employees, child support income withholding and New Hire Reporting (NHR) addresses, and information on the new Acknowledgment of Receipt of Order to Withhold Income/Order to Modify Withholding and Waiver of Service.

We'd also like to invite you to check out our website on the Department of Public Health and Human Services (DPHHS) home page. The address is <http://www.dphhs.state.mt.us>. This web site provides the most recent news about the Child Support Enforcement Division (CSED). One interesting spot is the "Hot Issues" section. CSED publishes, on a quarterly basis, a listing of the names and addresses of obligated parents who have not paid child support for the last 12 months. Another point of interest may be the vehicle support lien index. This site shows liens filed by the DPHHS CSED with the Montana Motor Vehicle Division for past due child support. For your convenience, we plan to add WAGES newsletters to this site as well.

A few months ago, the CSED and the Department of Revenue mailed all Montana employers NHR pre-printed forms along with Montana's Guide to New Hire Reporting. The pre-printed forms replaced previously issued forms and should show your correct State Employer Identification Number (SEIN.) Please check to make sure you are using these forms. If you need help with the forms, please call the NHR Program toll-free at 1-888-866-0327, or 1-406-444-9290 if you are in Helena or outside Montana.

Montana employers are vital to the child support enforcement effort. NHR allows CSED to locate obligated parents and attach wages expeditiously to ensure continued support to families who depend on it. Collection statistics gathered from Montana's NHR have proven the program is successful. From October 1, 1997, to September 30, 1999, Montana's CSED can attribute more than \$4.8 million in collections from matches made using the Directory of New Hires, and \$41.6 million to employer income withholding in general. Thank you for your support in making this program a success.

Remember, Employer Relations Specialist, Julie Bailey, is available to answer your questions on child support employer related issues. Julie can be reached through the CSED Customer Service Unit (CSU) at 1-800-346-5437 or directly at (406) 444-6893. If you call the toll-free number, please be sure to ask for Julie or to let the Customer Service Representative know you are calling about "employer related issues." This will allow us to serve you better. If Julie is not available for your call, please leave a

message in her voice mail box, and she'll get back to you as soon as she can.

I hope the information provided in this newsletter is helpful. And, as always, thank you for your continued efforts to help us collect child support. Employers make a tremendous difference in the lives of Montana children by ensuring consistent and timely payments to families.

Sincerely,

Mary Ann Wellbank
Administrator

Employers Are Required to Maintain Files for Orders to Withhold Income, Orders to Modify Withholding and Orders to Terminate Withholding

If an employer is served with an Order to Withhold Income (OWI), Order to Modify Withholding (OTM) or Order to Terminate Withholding (OTT), the employer is required to keep the OWI, OTM or OTT on file and reinstate the garnishment for the OWI or OTM if the employee returns to work for the employer/payor.

An employer is also required to notify the Child Support Enforcement Division (CSED) of the following information if an employee terminates:

- employee's termination or separation date from employment;
- employee's last known home address; and
- name and address of the employee's new employer or other source of income, if known.

Employers can provide the above information in writing to the address provided on the OWI or OTM or by calling the CSED Customer Service Unit at 1-800-346-5437 or (406) 442-7278 (Helena or out of state). Reference: Montana Code Annotated 40-5-421(4).

Employers may stop garnishment of an employee's wages when they receive an Order to Terminate Withholding (OTT) from the Montana CSED. If an employee who has worked for a business in the past returns to work, the OTT will be the employer's only notification that the OWI or OTM does not need to be reinstated. The OTT cancels the OWI/OTM. CSED requests that employers do not send OTTs back to the Montana CSED office notifying CSED that the employee no longer works for the employer. Please keep the OTT on file in case the employee returns to work for you. **Reference:** Montana Code Annotated 40-5-415 and 40-5-417.



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\$5.00 Per Month Employee Processing Fee

The Montana Child Support Enforcement Division's (CSED's) Order to Withhold Income (OWI) or Order to Modify Withholding (OTM) notifies employers that they may assess their employee an additional \$5.00/month processing fee to help defray the cost of the child support withholding. This fee is to repay handling costs incurred by the employer during the garnishment process, such as postage, envelopes, payroll fees, and check costs. Employers cannot withhold the additional \$5.00/month processing fee from the child support garnishment. For example, the OWI notifies the employer to withhold \$125.00/month child support. The employer withholds \$125.00 and sends the full \$125.00 garnishment to CSED and charges the employee the additional \$5.00/month processing fee. Reference: Montana Code Annotated 40-5-416(1)(c). However, as stated on the notice, if you choose to withhold a fee, the maximum amount withheld from the employee's wages, including fees, may not exceed 50%.

Income Withholding Address

The Child Support Enforcement Division (CSED) has designated one address to receive and process child support income withholding checks. This will enable CSED to issue child support payments to the correct party much more efficiently. Please make checks payable to CSED and mail to:

CSED
Wage Withholding
P.O. Box 8001
Helena, MT 59604-8001

Reminder: All child support garnishment checks are to be sent within seven (7) working days of the employee's pay date.

New Hire Reporting Address

Please send all New Hire Reporting (NHR) forms and information to:

Montana New Hire Reporting Program
P.O. Box 8013
Helena, MT 59604-8013

Employers may also call the NHR Program toll free at 1-888-866-0327. For the Helena area, and outside Montana, employers may call 1-406-444-9290. Phone lines are staffed between 8:00 a.m. and 5:00 p.m. Monday through Friday except state holidays. Employers may call after hours and simply record NHR information. Employers may also fax NHRs to 1-888-272-1990. For the Helena area, and outside Montana, employers can fax to 1-406-444-0745.

Electronic Funds Transfers

The Child Support Enforcement Division (CSED) has experienced personnel to help employers with programming or any questions regarding the software and format needed to send payments electronically. Sixty-five employers and fifteen states are currently taking advantage of the EFT/EDI (Electronic Funds Transfer/Electronic Data Interchange). EFT/EDI is a faster, more convenient and cheaper way to submit child support payments available to employers. Most banks now offer a software package that contains the CCD+ format used to transmit child support payments electronically.

The EFT/EDI method of making child support payments offers a number of benefits to the employer.

1. Date of Collection (DOC) is either the actual date the EFT/EDI is sent or the employer has the option of entering a DOC. This information is auto uploaded into the system which eliminates the possibility of DOC information being keyed incorrectly.
2. One transaction for multiple employees costs approximately \$.12 compared with approximately \$.55, including postage, for a check for each employee or one check for multiple employees.
3. Once the format is set up, it is fast and efficient, saving time and money for the employer.
4. Set up properly, EFTs are more accurate. Child support payments are credited to an employee's account, automatically eliminating posting errors.
5. Mailing time is eliminated. Payments are received faster by the family receiving child support.
6. There are no checks lost in the mail or stolen.

If employers would like more information or have questions concerning EFT/EDI, please contact Maggie Baertsch, EFT Disbursements at (406) 444-2775.

Employer Non-Sufficient Funds (NSF) Checks

The Montana Child Support Enforcement Division (CSED) appreciates employer cooperation in the income withholding process but does receive a number of NSF checks from employers. Pursuant to Montana Code Annotated (MCA) 45-6-316, an employer commits the offense of issuing a bad check if that employer issues a check knowing that it will not be paid by the depository. The statute further provides that failure to make payment on the check within five days of the receipt of written notice of nonpayment is "prima facie" evidence that the person knew the check would not be paid.

In addition, MCA 27-1-717 states a person who issues a check which is dishonored for lack of funds may be liable for a service charge not to exceed \$30.00, plus damages awarded in the amount of the greater of \$100 or three times the amount of the check, but not exceeding the value of the check by over \$500.

FROM:

(Company Name)

Make check or money order payable to:

[illegible]

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WY-CSED (Wyoming)

****DOC-Date of Collection is date money was withheld from the employee's pay check**

An employer who issues a bad check to CSED will be sent a letter by CSED notifying the employer of the check number and dollar amount that was returned to CSED marked as NSF. The employer will be required to remit payment in the form of a cashier's check or money order to CSED within five (5) days of service of the letter from CSED. If the money is not remitted to CSED within five days, CSED may refer the matter to a county attorney for prosecution or take further collection action. If employers have questions, they may call CSED at 1-800-346-5437.

Income Withholding Garnishment Limitations for Montana Child Support Enforcement Division Orders to Withhold Income

The federal Consumer Credit Protection Act (the Act), 15 U.S.C. 1671 et seq., limits the ability of creditors to garnish the "earnings" of a debtor. "Earnings" are defined by the Act to mean "**compensation paid or payable for personal services**, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program." Therefore, the limits of the Act do not apply to all income of a debtor, but only income that falls within the definition of "earnings".

Summarizing the provisions of the federal Consumer Credit Protection Act, generally only 25% of a debtor's "disposable earnings" are subject to garnishment. "Disposable earnings" are also specifically defined in the Act (15 U.S.C. 1672(b)) as "that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld." However, there are exceptions to this 25% limitation. **When the garnishment is for child or spousal support, a Chapter 13 bankruptcy order, or for state or federal tax, the 25% limitation does not apply** (15 U.S.C. 1673(b)).

The Act goes on to provide that the garnishment limitation, when the debt is for child or spousal support, is 50% to 65% depending on the age of the arrears and whether the debtor/obligor has new dependents. The garnishment limitation is 50% when the debtor has new dependents but the arrears are less than 12 weeks old; 55% when the debtor has new dependents but the arrears are more than 12 weeks old; 60% when the debtor does not have new dependents and the arrears are less than 12 weeks old; and 65% when the debtor does not have new dependents and the arrears are more than 12 weeks old.

In determining whether the garnishment limitations under the federal Consumer Credit Protection Act (and under Montana Code Annotated 40-5-416) apply, the employer needs to review the type of money to be garnished. An employee's/obligor's disposable earnings are subject to the 50%-65% garnishment limit for child support debts (15 U.S.C. 1673(b)). **Money that does**

not fit the definition of earnings is not subject to the garnishment limitation, meaning that 100% of the money may be subject to garnishment.

The Child Support Enforcement Division (CSED) issues an Order to Withhold Income (OWI) or Order to Modify Withholding (OTM) to an employer/payor to withhold a monthly child support garnishment of up to 50% of the employee's/obligor's income for child support. Montana CSED policy for the income withholding limit is 50% (in most cases) of disposable earnings if the income is for remuneration for personal services, and 100% if the income is for contract proceeds not for personal services.

Examples of orders that would not exceed the total garnishment limitations of federal and state law:

1. Assume a Montana CSED withholding order and a state of Montana tax levy. The CSED order must be honored first (MCA 40-5-423). If it takes 50% of the obligor's disposable earnings to honor the CSED order, the state tax levy cannot be honored at all because it is subject to a 25% limit by federal and state law (MCA 25-13-614) and at least 25% has already been taken. If it takes only 20% of an obligor's disposable earnings to satisfy Montana's OWI, there is 5% left that is reachable by the state tax levy to take the total garnishment up to the 25% limit for state tax levies.
2. Assume a CSED withholding order and court-issued child support withholding order for another family. The CSED order must be honored first (MCA 40-5-423). If it is only necessary to take 40% of the obligor's disposable earnings to satisfy the CSED order, up to another 25% of the obligor's disposable earnings may be available to satisfy, as much as possible, the other withholding order. This is true because the other order is for child support, so it is also subject to the 50%-65% limitations of the federal Consumer Credit Protection Act. It is only the CSED that chooses the 50% limitation. The person obtaining the privately initiated withholding order is free to assert the higher limitations of the federal Act and state law. The determination of whether the applicable total limit is 50%, 55%, 60% or 65%, and therefore how much disposable earnings remain to honor the second order, depends on the age of the debt and whether the obligor has new dependents. It is not a decision made by the CSED because the question does not arise under the CSED order but only for the second order. The determination of the appropriate limit would be between the employer/payor and the other creditor.

General Rule: Garnishment orders cannot be stacked or honored in succession when to do so would exceed the limit applicable for the second garnishment order.

Local Child Support Offices

Region 8 - Interstate Region
P.O. Box 202943
Helena MT 59620-2943
(406) 442-7278 - Out of State/Helena area
(800) 346-5437

Region 2 - Great Falls
Southside Plaza, Suite D
219 5th Street South
Great Falls MT 59405
(406) 442-7278 - Out of State/Helena area
(800) 346-5437

Region 3 - Billings
2121 Rosebud Drive, Suite E
Billings MT 59102
(406) 442-7278 - Out of State/Helena area
(800) 346-5437

Region 4 - Butte
17 West Galena
Butte MT 59701
(406) 442-7278 - Out of State/Helena area
(800) 346-5437

Region 5 - Missoula
1610 South 3rd West, Suite 201
Missoula MT 59801
(406) 442-7278 - Out of State/Helena area
(800) 346-5437

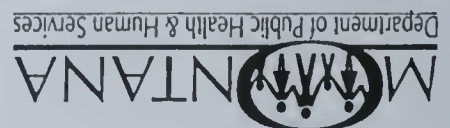
Child Support Enforcement Acronym

CSED	Child Support Enforcement Division
CSU	Customer Service Unit
DOC	Date of Collection
EDI	Electronic Data Interchange
EFT	Electronic Funds Transfer
MCA	Montana Code Annotated
NHR	New Hire Reporting
NSF	Non-Sufficient Funds
OTM	Order to Modify Withholding
OTT	Order to Terminate Withholding
OWI	Order to Withhold Income
SEIN	State Employer Identification Number
USC	United States Code
WAGES	Withholding and Guidance for Enforcement of Support

The Montana Department of Public Health and Human services, Child Support Enforcement Division, attempts to provide reasonable accommodations for any known disability that may interfere with a person participating in any service, program or activity of the department. Alternative accessible formats of this document will be provided upon request. For more information, call (406) 442-7278 or TDD (406) 442-7243.

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Montana State Library
Attn: State Documents
1515 E Sixth Avenue
Helena, MT 59620



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